No. 90-497

In The

Supreme Court of the United States

October Term, 1990

JAMES WILLIAMS,

Petitioner,

-vs-

JAMES A. CHRANS, Warden of Pontiac Correctional Center and NEIL F. HARTIGAN, Attorney General of the State of Illinois,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals, Seventh Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

I. Whether this Court should deny the writ where the Court of Appeals found that the trial court properly exercised its discretion in evidentiary rulings and where even if error had occurred, habeas relief is prohibited.

II. Whether petitioner has failed to present a substantial federal question for review where the factual basis of his question does not exist in this case and where even if the conduct petitioner claims had occurred, the result would not have changed.

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JURISDICTION

The jurisdictional requisites are adequately set forth in the petition. However, as treated more fully by the argument contained herein, respondent does not believe petitioner has shown any reason for this Court to exercise its sound judicial discretion to grant the writ.

STATEMENT OF THE CASE

A. Trial Testimony

Isadore Glover, the victim's brother, testified that at about 3:00 p.m. on the day of the murder he witnessed an argument between the victim and Williams, whom Glover identified in court. Apparently, Williams owed the victim ten dollars. The intensity of the argument increased to the point where Williams punched the victim in the head. When the victim went after Williams with a crutch, Williams ran from the victim and said "I will see you later." Forty-five minutes later, the victim left for Brian's Lounge, a west-side tavern. Thirty minutes after the victim left, Glover left to join him at the tavern. After talking with his brother, Glover returned home. Glover was later called back to the bar, where he saw his brother lying in a pool of blood. Glover testified that later he identified Williams in a photo spread as the man who had argued and fought with the victim at 3:30 p.m. on the date of the murder. (*United States ex rel. Williams v. Chrans*, No. 87 C 5242 at 2)

Lee Grady testified that he was in the tavern at the time of the shooting but could not see the assailant's face. During the cross-examination of Grady, the trial court sustained hearsay objections to defense counsel's questions regarding statements made by a "Mr. Beasley" to Grady on July 7, 1982. 545-46. *Id.*

Charles Clemons was a regular at the tavern and was present at the time of the shooting. Clemons testified that the victim was shot as the victim moved to take a seat at the card table. Clemons saw a man holding a gun with both hands before Clemons fell to the floor to avoid

further gunfire. Clemons further testified that two days after the shooting, on July 1, 1982, he viewed a lineup of five men, one of whom was Williams. At the time of the lineup, Clemons told an officer that Williams "looked something like the man that [Clemons] caught a glimpse of but [Clemons] wasn't sure." *Id.* at 589. Clemons then told the officer that the gunman had worn a cap. But even after the officer put a cap on Williams, Clemons "wasn't one hundred percent sure" so he could not make a positive identification. *Id.* at 3.

Andrew Tucker testified that he was Clemons' card partner the night of the shooting. Tucker had gotten up from the table and was bending over to pick up his coat when he heard the first shot. Tucker then tried to stand up but could not because the victim, who had been behind Tucker, grabbed Tucker around the neck. Tucker turned to face the gunman who was standing six to eight feet away. The gunman fired another shot, the victim's grip weakened and Tucker dove to the side. Tucker identified Williams in court as the gunman and testified that he recognized Williams from the three years the two spent together in grammar school. Tucker further testified that he identified Williams in a photo spread on July 6, 1982 and in á lineup on July 13, 1982. *Id.*

The State offered evidence to corroborate Glover, Tucker and Clemons' testimony. Detective Edward Rave of the Chicago Police Department testified that on June 30, 1982 Glover had made an identification of Williams from a photo spread. Detective Rave also testified that on July 13, 1982 Tucker identified Williams in a five-man lineup. Detective Robert Cozzi testified that on July 6, 1982 Tucker identified Williams in a photo spread.

Finally, Detective Michael O'Sullivan testified that Clemons at the time of the lineup told him that Williams "resembled" the gunman but that Clemons could not be sure. *Id.* at 4.

Williams did not testify in the defense case, but a number of others did.

Emma "Pussycat" Ginns testified that she had been in the tavern at the time of the murder, but that she had not seen Williams in the tavern at all that day. On cross-examination Ginns admitted talking to Glover the day after the murder but denied having told Glover that Williams was the one who had shot Robert Love. *Id.* at 5.

Williams' wife Jacqueline testified first about a police search of the Williams' apartment at approximately 8:00 p.m. the day after the murder. After hearing a knock on the door she opened the door and found three police officers standing with their guns drawn. Without permission to enter or a search warrant, the officers walked past her, asked if her husband was at home and searched the apartment for about five minutes. Jacqueline later told Williams what had happened after he returned to the apartment. Jacqueline further testified that the next morning at approximately 6:00 a.m. the police returned. After opening the door, Jacqueline told the police her husband was in bed. The police again walked past her and into the bedroom where they arrested Williams.

Williams also called Detective Cozzi back to testify in the defense case. The trial court rejected defense counsel's request to conduct an adverse examination of Detective Cozzi, so objections to leading questions were sustained. Detective Cozzi essentially testified that he

had interviewed a number of people at the tavern the night of the murder and from those interviews had obtained a composite description of the gunman. But as of the night of the murder, Detective Cozzi did not have a suspect in mind. *Id.*

In rebuttal, the State called two witnesses to impeach Ginns. Glover testified that the day after the crime Ginns had told him that Williams was the murderer. Grady testified that the night of the murder Ginns had told him that she had seen and recognized the murderer. *Id.* at 6.

B. Motion to Quash and Suppress

Prior to trial, Williams made a motion to quash his arrest and suppress identifications made subsequent to his arrest, including any pretrial or trial identifications of Williams made by Ginns, Tucker, Margaret Russell and Carl Beasley. On January 31 and February 2, 1983, the trial court held a suppression hearing on that motion. When called in support of the motion, defendant and his wife Jacqueline testified that he was subjected to a warrantless arrest at gunpoint in his apartment during the early morning hours of July 1, 1982. (R. 108, 215) According to defense testimony, Williams was not given *Miranda v. Arizona*, 384 U.S. 436 (1966) warnings at that time. (R. 108) Defendant claimed he was taken to police headquarters where he was interrogated, abused, and denied access to counsel. (R. 219-20)

This account was completely contradicted by a State's witness, however. Chicago police detective McCarthy reviewed police reports and summaries of witness interviews before he made the arrest. (R. 246-51) One

person had already made a positive identification of defendant at that time. (R. 249) McCarthy called defendant's apartment and spoke to his wife to announce his arrival, and McCarthy presented his identification at the door before he was allowed entrance by Mrs. Williams. (R. 252-53) Defendant was then taken into custody. According to McCarthy, *Miranda* warnings were given at that time, and defendant was never abused in any manner. (R. 254)

Defendant never filed a motion to suppress statements (R. 381), and petitioner apparently concedes that no custodial statements were made or used as evidence at trial. (Pet. 3). (See also R. 379-80)

The trial court judge broadly construed defendant's "omnibus motion" to suppress identification evidence as a motion to quash the arrest as well. (R. 374) In the course of ruling on the motion, the court found that Mrs. Williams had consented to the officer's entry into the apartment. (R. 376, 379) The judge also found probable cause to support the warrantless arrest. (R. 376-77, 379) The court concluded that defendant failed to prove a denial of counsel during questioning to the extent that this "ancillary" argument was relevant to the motion at all. (R. 379, 381)

Defendant also called Mary Russell, Emma Ginns, and Carl Beasley as hearing witnesses. All three testified that they were subjected to police harassment calculated to obtain an identification of defendant. Ginns, for example, claimed she had seen police officers kick Beasley. (R. 95-96) whereas Russell heard the officers whip Beasley. (R. 62-63) Beasley never mentioned these events during

his own claims of police misconduct, however. (Finding, R. 384-85) Russell and Ginns added that they were denied food, telephone, and bathroom privileges. (R. 62, 92-93) This testimony was contradicted on all points by police officers. (R. 154, 157, 165, 202-205)

Although they were present in the tavern that night, Russell and Ginns testified that they never saw the shooter at all. (R. 57-58, 94) As a result, the State represented that it did not intend to call these witnesses at trial. (R. 320-21) The State also stated that it would not seek to introduce a pre-trial identification made by Beasley during its case-in-chief. (R. 384) After resolving witness credibility in the State's favor, the trial judge denied the motion to suppress identification testimony. (R. 383)

Neither Russell nor Beasley ever testified at trial. (Pet. 12) When Ginns appeared as a defense witness, she claimed she did not see the shooting and could not make an identification.

At the suppression hearing, Mrs. Williams also claimed that officers had twice searched the apartment when looking for defendant or for evidence. (R. 101-102, 105) No evidence was seized, no motion to suppress physical evidence was filed, and no physical evidence of this nature was presented at trial.

It should be noted that additional evidence concerning the officers' pre-trial investigation was adduced at trial. After occurrence witness Charles Clemons was unable to give a "100 per cent positive identification" from a photograph display (R. 599), Clemons viewed a lineup. Clemons indicated that defendant "looked something like" the shooter but he could not be "absolutely

positive." (R. 589-90, 664, 666) Defense counsel at trial proved that Clemons was unable to get a good look at the shooter. (R. 598-99)

After counsel's suppression motion was denied, counsel moved to dismiss the indictment on the ground of police intimidation of witnesses. (R. 1240-46) Ruling on the motion, the trial court observed that, notwithstanding counsel's allegations, counsel had conducted a prompt and thorough investigation (R. 404) and had been able to mount an "extremely aggressive defense". (R. 406) Counsel, if he wished, could prove bias or prejudice during cross-examination of witnesses at trial, but there was no reason that "the charges should just disappear." (R. 407) Because there was insufficient evidence to support defendant's allegation of official misconduct, the motion was denied. (R. 406-07)

REASONS FOR DENIAL OF THE WRIT

I.

THIS COURT SHOULD DENY THE WRIT WHERE THE COURT OF APPEALS FOUND THAT THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN EVIDENTIARY RULINGS AND WHERE EVEN IF ERROR HAD OCCURRED, HABEAS RELIEF IS PROHIBITED.

Petitioner contends that the Seventh Circuit erred in denying habeas relief because the trial court evidentiary rulings improperly excluded evidence to support his frame-up defense and impeach the State's witnesses. Respondent answers that even if petitioner's argument is

meritorious, which respondent does not concede, such finding would be insufficient to grant habeas relief.

All courts have consistently held that habeas corpus courts do not sit to review mere evidentiary rulings. The collateral habeas proceedings were not designed to provide state prisoners an additional appeal. Unless petitioner can demonstrate an erroneous evidentiary ruling that directly infringed a particular provision of the Bill of Rights, or which resulted in a fundamentally unfair trial, petitioner has not alleged a federal question for habeas review. *Cramer v. Fahner*, 683 F.2d 1376, 1385 (7th Cir. 1982); *United States ex rel. Clark v. Fike*, 538 F.2d 750, 757-58 (7th Cir.), *cert. denied*, 429 U.S. 1064 (1976); *United States ex rel. Bibbs v. Twomey*, 506 F.2d 1220, 1222-23 (7th Cir.), *cert. denied*, 429 U.S. 1102 (1974); *United States ex rel. Harris v. Illinois*, 457 F.2d 191, 198 (7th Cir.), *cert. denied*, 409 U.S. 860 (1972).

A. Petitioner Was Not Deprived Of His Right To Present A Defense.

Petitioner alleges he was unable to "present a defense" because he was unable to introduce unspecified evidence of police misconduct in order to impeach State's witnesses. Examination of the trial record reveals that defense counsel sought to have detectives Rave and Cozzi treated as court's witnesses so they could testify concerning "treatment of certain witnesses." (R. 701-702) As counsel's argument progressed, it appeared that counsel wished to suggest intimidation of State's witnesses Grady, Clemons, and Tucker by means of proof that Rave

and Cozzi intimidated Ginns, Russell, and Beasley. (R. 701-14)

Russell and Beasley never testified at trial, however. (R. 705) Moreover, when defense counsel argued this point, Ginns had not yet testified. As a result, the trial judge correctly concluded that evidence concerning intimidation of Ginns, Russell, or Beasley would not be relevant unless or until these people testified at trial. (*Id.*) In a related manner, the judge believed that evidence of this nature would only serve to cloud the issues and confuse the jury. (R. 703)

Although an accused surely has a constitutional right to present a defense, there is no sixth or fourteenth amendment right to present irrelevant evidence. *See, e.g., United States v. Verkuilea*, 690 F.2d 648, 659 (7th Cir. 1982).

The district court held that, "absent some proof that the police misconduct affected the testimony of the State's witnesses or prevented Williams from offering exculpatory evidence, the alleged police effort to 'frame' him was not relevant to the question of whether William in fact had been the murderer."

B. The District Court Properly Held That Petitioner Was Not Denied His Right To Confront Witnesses.

Petitioner reformulates the same argument as above under the guise of sixth amendment confrontation and fourteenth amendment due process claims. In the district court, petitioner alleged he was unable to elicit the same evidence of police intimidation of Grady, Tucker, and Clemons during cross-examination of State's witnesses

Grady and Cozzi. Petitioner also claimed he was unable to ask leading questions on direct examination when defendant called Cozzi as his own witness.

This claim is equally unavailing. Respondents initially note that petitioner, in the record passages cited in his petition for writ of habeas corpus, failed to present a factual basis for his claim. In those passages, there is no indication that counsel sought to prove police intimidation of witnesses. Petitioner has waived this argument by his failure to lay the proper foundation.

During the People's case in chief, defense counsel extensively cross-examined Tucker, Glover and Clemons. During Tucker's cross-examination, defense counsel asked Tucker if at the time of his questioning at Area Four headquarters he had known that his mother Rose had been questioned at Area Four two days earlier. After Tucker responded that he had, defense counsel asked no further questions along that line. Aside from that one question, defense counsel failed to probe Tucker, Glover and Clemons on cross-examination for any possible effect of police misconduct on the veracity of their testimony. No attempt was made to lay the proper foundation for the impeachment of the People's witnesses by asking if their testimony was affected by any harassment or fear of harassment of themselves or their family members. The record does reveal that during Grady's cross-examination defense counsel sought to prove that Grady met Russell, Ginns, and Beasley after they returned from headquarters. The State's objection to the witnesses' speculation was properly sustained, however. (R. 543-46) Very simply, counsel did not seek to prove intimidation during cross-examination of State's witnesses. (R. 711-12) As the state

appellate court noted, " . . . defense counsel never cross-examined Tucker or Glover as to whether they had been intimidated by the police." (Op. 8) Defense counsel was also able to present his theory of police harassment in Jacqueline Williams' testimony and in argument.

Before the start of the defense case, defense counsel announced their intention to call as witnesses Detectives Rave and Cozzi, the officers who were involved in the early investigation and conducted the interrogations of Ginns, Russell and Beasley at Area Four. Defense counsel claimed that the evidence of the early stages of the investigation was relevant so that the jury could decide whether the identifications of Tucker, Glover and Clemons were reliable. *Id.* at 707. The trial judge responded that in his view evidence of police harassment of Ginns, Russell and Beasley would only be relevant if one of the three testified. Defense counsel then argued that Ginns and Russell's testimony about the interrogation procedures at Area Four was relevant to attack the identifications made by Tucker, Glover and Clemons at Area Four. Defense counsel further argued that if Tucker, Glover and Clemons had in fact been intimidated that they would not admit it on the stand because of their fear. But again, no attempt was made to lay a foundation. The trial court rejected those arguments and precluded inquiry in that area. *Id.* at 713-14.

Petitioner now claims that the trial judge's evidentiary ruling excluding evidence of the harassment of Ginns, Russell and Beasley which was intended to impeach Tucker, Glover and Clemons was error. But, as stated above, even if petitioner's argument is found to be meritorious, a mere finding that an evidentiary ruling was

erroneous is an insufficient basis for granting habeas relief. The conviction stands unless the error "amounted to a fundamental defect so great that it inherently resulted in a complete miscarriage of justice." *Cramer v. Fahner*, 683 F.2d 1376, 1386 (7th Cir. 1982), *cert. denied*, 459 U.S. 1016 (1982); *United States ex rel. Fuller v. Attorney General of Illinois*, 589 F.Supp. 206, 209 (N.D. Ill. 1984) (Aspen, J.), *aff'd*, 762 F.2d 1016 (7th Cir. 1985). The district court held that it need not reach that question, however, because it found that, "the trial judge acted within his discretion by keeping the evidence out. Standing alone, evidence of improper police conduct relating to Ginns, Russell and Beasley is not sufficiently probative of possible police misconduct relating to Tucker, Glover and Clemons to overcome the highly prejudicial impact such evidence would have had in the case." *United States ex rel. Williams v. Chrans*, No. 87 C 5242.

The district court went on to find that the trial court erred in its restrictions of Grady's cross-examination, but also held that "In summary, the record generally reveals that Grady was an insignificant witness in an otherwise strong State case. As a result, the court finds that the trial court's error did not deprive Williams of a fair trial."

II.

PETITIONER HAS FAILED TO PRESENT A SUBSTANTIAL FEDERAL QUESTION FOR REVIEW WHERE THE FACTUAL BASIS OF HIS QUESTION DOES NOT EXIST IN THIS CASE AND WHERE EVEN IF THE CONDUCT PETITIONER CLAIMS HAD OCCURRED, THE RESULT WOULD NOT HAVE CHANGED.

Petitioner contends that the "police misconduct in this case was indeed outrageous, had the purpose and effect of coercing fake testimony against the defendant, and irreparably tainted the evidence presented by the State at trial". (Pet. brief at 30) The district court disagreed, citing *United States v. Morrison*, 449 U.S. 361, 365-66 (1981), which stated that dismissal is inappropriate absent demonstrable prejudice, or substantial threat thereof.

The district court held that:

> "The court has already rejected most of Williams' claims of prejudice and now rejects the remainder. Williams' speculative claim that police misconduct *must* have affected State witnesses is not supported by the trial record. Moreover, Williams' conclusory statement that police misconduct crippled defense counsel's investigation is unconvincing absent some concrete connection between police misconduct and later discovered exculpatory evidence."

Williams does not and cannot claim that any evidence used at trial was obtained by improper means. For example, he alleges that he was abused and denied counsel during interrogation, but he concedes that no statement was thereby obtained or used at trial. (Petition for a writ of habeas corpus at 3) Petitioner also alleges that two

warrantless searches of his apartment were conducted. (*Id*). Even if a fourth amendment claim could be presented to a habeas court, *Stone v. Powell*, 428 U.S. 465 (1976), petitioner must acknowledge that no evidence was seized or introduced at trial. Finally, Ginns, Russell, and Beasley at the suppression hearing claimed myriad forms of police coercion (Pet. 4-6), but none of these persons gave identification testimony.

"Misconduct by the police, however, reprehensible, is not a ground for federal habeas corpus if it does not contribute to a conviction." *Miller v. Eklund*, 364 F.2d 976, 978 (9th Cir. 1966) (dismissing a similar claim of an unsuccessful attempt to obtain a confession). *Accord, In Re Faiola's Petition*, 185 F.Supp. 564, 572-73 (D. N.J. 1960). After Glover, Clemons, and Tucker gave identification testimony at trial, defendant's remedy for alleged police misconduct lay in cross-examination of those witnesses. Defendant was free to raise the issue of misconduct to impeach those witnesses for bias. As the trial judge noted, however, there was no reason for the "charges to disappear." (R. 407)

Since petitioner cannot show that any evidence was obtained by improper means, he falls back on his argument that the testimony, and therefore credibility, of the witness was affected by the alleged police misconduct.

Respondents challenge Williams' approach to matters of witness credibility. At the suppression hearing, defense witnesses claimed to have suffered abuse or coercion at the hands of police officers. For example, petitioner often returns to the testimony given by Ginns and Russell to argue that "glaring misconduct by the police was also

established by [this] sworn testimony." (Pet. Mem. 23) As the state trial and appellate courts noted, however, State's witnesses contradicted the testimony of defense witnesses.[1] Indeed, defense witnesses seriously contradicted themselves. After Ginns and Russell catalogued a list of abuses to Beasley, Beasley never claimed any police misconduct at all in his testimony. (R. 384-85) The trial court judge as trier of fact heard all the witnesses and dismissed petitioner's pre-trial motions. Although a petitioner in habeas may argue that determinations of the state courts are not fairly supported by the record, petitioner may not seek to relitigate witness credibility to prove his claims. *Maggio v. Fulford*, 462 U.S. 111 (1983); *Jackson v. Virginia*, 443 U.S. 307 (1979); *Milton v. Wainwright*, 407 U.S. 371 (1972) (all recognizing the exclusive responsibility of the trier of fact to resolve testimonial conflicts). In sum, petitioner must now accept the record as it is, and he may not seek to prove misconduct by parsing the record for defense testimony to afford it conclusive credibility. *Nelson v. Thieret*, 793 F.2d 146, 148 (7th Cir.), *cert. denied*, ___ U.S. ___, 107 S.Ct. 418 (1986) (honoring the trial court's assessment of witness credibility despite petitioner's interpretation of the record in an "exculpatory manner"). Neither may petitioner hope to gain by making bald allegations unsupported by the record.

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[1] Petitioner adopts an uncharitable and unrealistic approach to government testimony. Conflicting testimony from State's witnesses is dismissed as "predictable", "pro forma", or as "simply incredible". At the same time, petitioner engaged in hyperbolic arguments without any support in the record. (Pet. Mem. 24, 25, 31)

Equally important, although the government denies any allegations of "outrageous governmental conduct", respondents wish to make two fundamental points here. The first of these concerns the appropriate remedy for claims of official misconduct. If, as in most of the cases cited by petitioner, evidence obtained by improper police practices was actually used at trial, then the conviction may indeed be constitutionally vulnerable.[2] By invoking the exclusionary rule, however, criminal defendants have a proper and adequate remedy in the form of evidence suppression. Official misconduct is not a reason for which to dismiss an indictment or vacate a conviction. Speaking in the context of indictment dismissal, the Supreme Court has held,

> absent demonstrable prejudice, or substantial threat thereof, dismissal of the indictment is plainly inappropriate, even though the violation may have been deliberate . . . The remedy in the criminal proceeding is limited to denying the prosecutor the fruits of his transgression.

United States v. Morrison, 449 U.S. 361, 365 (1981) (where defendant's motion to dismiss an indictment, alleging an "egregious sixth amendment violation," was properly

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[2] *See, e.g., Rochin v. California*, 342 U.S. 165 (1952) (where evidence of morphine obtained by improper means was used to prove defendant's guilt). *Rochin* was decided before the exclusionary rule was made applicable to the states in *Mapp v. Ohio*, 367 U.S. 643 (1961). All of petitioner's other cases examine entrapment claims in which the exclusionary rule is inapposite because officers prompted the very act or crime for which defendant was later convicted. Outrageous government conduct defenses are perhaps appropriate in entrapment cases only. *Wilcox v. Ford*, 813 F.2d 1140, 1148 (11th Cir. 1987).

denied). *Accord, United States v. Sander*, 615 F.2d 215 (5th Cir.), *cert. denied*, 449 U.S. 835 (1980) (evidence suppression, not indictment dismissal, was the proper remedy after agents examined confidential files). As a result, the trial judge in the instant case concluded that defendant's allegations, even if proven, provided no reason that "the charges should just disappear." (R. 407) *See also Hampton v. United States*, 425 U.S. 484, 490 (1976) (retreating from dicta in earlier cases to decide that defendant's remedy lies in criminal or civil proceedings against the officers); *United States v. Agurs*, 427 U.S. 97, 110 (1976) ("the character of the evidence, not the character of the prosecutor" is the relevant inquiry); *Smith v. Phillips*, 455 U.S. 209, 219, 220, n. 10 (1982) (culpability of the prosecutor is "not relevant" for the due process clause); *Mabry v. Johnson*, 467 U.S. 504, 511 (1984) (the due process clause is not a "code of ethics for the prosecutor"); and *Miller v. Eklund*, 364 F.2d 976, 978 (9th Cir. 1966) (police misconduct, however, reprehensible, does not provide a basis for habeas corpus relief).

The second point concerns petitioner's failure of proof in the state courts. Petitioner, however hyperbolic his claims may be, cannot identify official misconduct so egregious as to have denied him due process of law. Indeed, as respondents demonstrated to the satisfaction of both the district and circuit federal courts, counsel during trial failed to prove any of petitioner's allegations of misconduct. As a result, there is no evidence of official misconduct in the record other than petitioner's self-serving, unsupported allegations. It is noteworthy, however, that in the proceedings reviewed in *Wilcox v. Ford*, 813 F.2d 1140 (11th Cir. 1987), the habeas petitioner also

alleged that police officers had abused potential witnesses. In marked contrast to the case at bar, the facts of abuse were actually established in *Wilcox*. While interrogating elderly and illiterate witnesses, officers there had threatened: to prosecute them; to hold them indefinitely; to lynch them; and to send them to the electric chair. Officers put words in the mouths of witnesses until they gave statements "to be able to go home", withheld food and water, and told one witness he was "headed for eternal damnation." 813 F.2d at 1147. Respondents certainly deplore such actions of police officers. The *Wilcox* court nevertheless did not find a due process violation, and the court refused a writ of habeas corpus. *See also United States v. Reynoso – Ulloa*, 548 F.2d 1329, 1339 (9th Cir.), *cert. denied*, 436 U.S. 926 (1977) (where officers' threats to kill defendant's friends did not constitute outrageous governmental misconduct); *Ker v. United States*, 119 U.S. 436, 7 S.Ct. 225, 227 (1886) (after officers sought to avoid extradition requirements by kidnapping defendant and holding him prisoner in a boat, "we do not think he is entitled to say that he should not be tried at all."); and *Frisbee v. Collins*, 342 U.S. 519, 520 (1952) (refusing habeas corpus relief although defendant was abducted, handcuffed, and blackjacked in order to bring him to trial).

Petitioner finally addresses the crux of all his claims when he alleges a "conviction based on false evidence" Review of each of petitioner's claims reveals he cannot draw the vital connection between alleged misconduct and evidence used at trial, however.

Petitioner sought habeas relief because police officers searched his apartment on two occasions. Williams has

conceded that no evidence was thereby seized for use at trial. (R. 350; Pet. Mem. 4) Indeed, counsel tried to capitalize on this fact during closing argument to the jury. (R. 997-98)

Petitioner alleges he was interrogated in the absence of counsel after his request for an attorney. (Pet. 3) The trial court found that defendant never proved his request for counsel (R. 379), and no custodial statement was taken or used at trial. (R. 379-80)

Williams claims that Ginns, Russell, and Beasley were forced to give coerced identifications. (App. Brief at 33-34) The State did not call these witnesses at trial, however. Faced with this dilemma, petitioner in federal habeas review sought to use the same allegations to challenge the identification testimony that was indeed given by State's witnesses Glover, Clemons, and Tucker. According to petitioner's hypothesis, Ginns, Russell, and Beasley reported their "ordeal" with the police to State's witness Grady. Grady then shared this information with Glover, Clemons, and Tucker. ("News of the ordeal suffered by Russell, Ginns, and Beasley spread to the other witnesses." Pet. 17) Glover, Clemons, and Tucker, motivated by fear, were then persuaded to "pin the murder" on petitioner with false identifications. (Pet. Mem. 54) No evidence to this effect was presented in the trial court, however. In no record passage cited has appellant indicated that counsel sought to prove police intimidation of any witness other than Grady. During the State's case-in-chief defense counsel extensively cross-examined Tucker, Glover and Clemons. During Tucker's cross-examination, defense counsel asked Tucker if at the time of his questioning at Area Four headquarters he had known that his

mother Rose had been questioned at Area Four two days earlier. After Tucker responded that he had, defense counsel asked no further questions along that line. Aside from that one question, defense counsel failed to probe Tucker, Glover or Clemons on cross-examination for any possible effect of police misconduct on the veracity of their testimony. In the end, petitioner is forced to assume evidence not in the record or to engage in rampant speculation to demonstrate resulting prejudice. ("The testimony of Grady, Clemons, and Tucker must have been affected." Pet. Mem. 26) (See also Pet. Mem. 38: "we can never know whether news of this misconduct affected other witnesses.") In sum, there is no evidence in this record that identification made by State's witnesses were tainted by improper police practices.

CONCLUSION

For the foregoing reasons, the People of the State of Illinois respectfully request that this Honorable Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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